

Ordinance No: 15-23
Zoning Text Amendment No: 04-03
Concerning: Special exceptions – Hearing Provisions
Draft No. & Date: 1 – 2/03/04
Introduced: February 10, 2004
Public Hearing: March 16, 2004; 1:30 p.m.
Adopted: April 13, 2004
Effective: May 3, 2004

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Board of Appeals

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- authorizing the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals;
- requiring the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear;
- authorizing the Board of Appeals to add to, modify, or delete any condition to a special exception that are recommended by the Hearing Examiner; and
- generally amending the provisions regarding hearings for special exceptions.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-4	“COUNTY BOARD OF APPEALS”
Section 59-A-4.1	“Authority and powers”
Section 59-A-4.125	“Hearing examiner”
Section 59-A-4.41	“Requirement and scheduling”
Section 59-A-4.6	“Public hearings by [h] <u>H</u> earing [e] <u>E</u> xaminer”
Section 59-A-4.61	“Generally

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.

*[[Double boldface brackets]] indicate text that is deleted
from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 04-03 was introduced on February 10, 2004 and would authorize the Office of the Hearing Examiner to hear all special exception cases without a request from the Board of Appeals; require the Office of the Hearing Examiner to schedule and hold a public hearing on any matter it is authorized to hear; authorize the Board of Appeals to add to, modify, or delete any condition to a special exception recommended by the Hearing Examiner; and generally amend the provisions regarding hearings for special exceptions.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved as introduced.

The County Council held a public hearing on March 16, 2004, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on April 1, 2004 to review the amendment. The Committee supported approval of ZTA 04 as a measure to stabilize the Hearing Examiner's workload, simplify administrative procedures for the Board of Appeals, and implement recent budget and policy decisions affecting the Hearing Examiner's duties and responsibilities. The Committee recommended approval of ZTA 04-03, and it was noted by the Committee that any shift of the special exception function back to the Board of Appeals for budget or other reasons would require adoption of another ZTA.

The District Council reviewed Zoning Text Amendment No. 04-03 at a worksession held on April 13, 2004, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 04-03 will be approved as revised.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-A-4 is amended as follows:

59-A-4.1 Authority and Powers. * * *

59-A-4.12. Powers. * * *

59-A-4.125 Hearing Examiner.

(a) [Upon request of the board of appeals and with the approval of 3 of its members, the] The [h] Hearing [e] Examiner's office [shall have] has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the [c]County [b]Board of [a]Appeals on [specific] the following matters [pending before the board.];

(1) any petition for a special exception; and

(2) upon request of the Board and with approval of 3 of its members, any other matter pending before the Board.

(b) Except as provided in Section 59-G-1.12, the [The c]County [b]Board of [a]Appeals [shall have] has the sole authority to render a decision upon the merits of [such petitions for special exceptions or other cases] any petition for a special exception or any other matter referred to the office by the [b]Board.

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59-A-4.4 Public Hearings on Petitions and Appeals. * * *

59-A-4.41. Requirement and scheduling.

(a) Requirement. The Board or the Hearing Examiner must hold a public hearing on [all petitions] any petition for the grant of a special exception or variance and on [such other matters as may be] any other matter as is provided for by this Chapter or by the Board's Rules of Procedure.

(b) Scheduling.

(1) The hearing in the case of any petition for grant of special exception must be held not sooner than 60 days following the mailing of the notice of the filing of the petition pursuant to Paragraph (a) of section 59-A-4.46. In the case of any other matter within the Board's purview such hearing may be held not sooner than 30 days after the notice is mailed.

The Board, with an affirmative vote of at least 3 members, may reduce the notice period required for public hearing on a petition for a variance or special exception, or on an appeal from an administrative action if:

(A) the Board finds that an emergency poses an immediate threat to the public health, safety, convenience, welfare or necessity; or

(B) a delay would impose an unusual individual or community hardship.

In a situation in which a property owner holds a valid building permit to construct a single-family or townhouse structure in a new residential subdivision and an error committed or discovered during the course of construction on the site results in a violation of the specified setback requirements in the zone in which the property is located, and the variance required to overcome this error would involve less than 10 percent of the particular setback requirement which had been violated, the Board may, in response to a written request by the property owner, and by unanimous vote of the members present, hear the appellant's appeal for a variance at the first regularly-scheduled Board of Appeals public hearing following the posting of the

property in accordance with the requirements of section 59-A-4.43. The appellant is required to file all documents and information required by section 59-A-4.23.

- (2) A hearing on a petition for a special exception filed in the case of a registered home occupation or home health practitioner's office found to be in violation of section 59-A-6.1 must be scheduled within 30 days, or as soon thereafter as the [Board's] Hearing Examiner's calendar permits. The [Board] Hearing Examiner does not have authority to grant to the applicant any extension of the hearing in such a case.

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59-A-4.6 Public Hearings by [h]Hearing [e]Examiner.

59-A-4.61. Generally.

* * *

- (f) Any matter heard by the Hearing Examiner must be either approved or denied on the merits, or denied for want of the necessary total of affirmative votes or dismissed or allowed to be withdrawn. The Board of Appeals may add to, modify, or delete any conditions to a special exception recommended by the Hearing Examiner. The Board may dismiss any petition or appeal if it finds that the application does not conform to any stated procedural requirements of this Article or if the petition or appeal is frivolous or filed for purposes of harassment. The Council or Board may allow an [[applicant to withdraw his]] application to be withdrawn in accordance with subsection 59-A-4.25; [[provided, that]] however, if the request for withdrawal is made after publication of the notice of hearing, no application for a special exception for the land which is the subject of the application is

82 allowed within the time limitation set forth in Section 59-A-4.123
83 after the date of the order of the Council or Board approving the
84 withdrawal. If the application is not dismissed or allowed to be
85 withdrawn, it must be approved or denied on the merits, [[approved
86 with modified conditions,]] or denied for want of the necessary total
87 of affirmative votes. If an application is denied, a later application for
88 a special exception for the land which was the subject of the previous
89 application is subject to the limitations of Section 59-A-4.123.

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91 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
92 date of Council adoption.

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94 This is a correct copy of Council action.

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98 _____
99 Mary A. Edgar, CMC

100 Clerk of the Council